

JUL 25 1940

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1940.

No. 280.

DAVID SUBIN and BENJAMIN SUBIN, Trading as
ARCADIA HOSIERY COMPANY, and ~~LEO MIN-
NUCCI, et al., Constituting the Shop Committee of the
Employees of ARCADIA HOSIERY COMPANY, Inter-
venors,~~

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Petition for Writ of Certiorari and Brief in
Support Thereof.

CHARLES L. GUERIN,

Counsel for Petitioners.

1421 Chestnut Street,

Philadelphia, Pa.

CHARLES J. WEISS,

THOMAS F. GAIN,

Of Counsel.

International, 236 Chestnut St., Philadelphia



INDEX.

	Page
Petition for a Writ of Certiorari	1
I. Summary Statement of the Matter Involved...	2
II. Reasons Relied on for Allowance of the Writ...	3
Prayer for Writ	4
Brief in Support of Petition	7
I. Opinions Below	7
II. Jurisdiction	7
III. Statement of the Case	8
IV. Specifications of Error	9
V. Questions Presented	14
VI. Statutes Involved	15
VII. Argument	16
Summary of Argument	16
Point I. The Court below erred in applying the rule of substantial evidence in reference to the alleged interference with the forma- tion of the Shop Committee. It is in conflict with decisions in six other circuits	18
Point II. The Court below erred in enforcing the Board's order for reinstatement of dis- charged employees. Its ruling that the or- der was supported by the evidence is in con- flict with the decisions in other Circuits and the decision of this Court	28
Point III. The ruling of the Court below that the layoffs were discriminatory discharges for union membership and activity, was er- roneous because not supported by evidence of the employer's knowledge	31

INDEX—Continued.

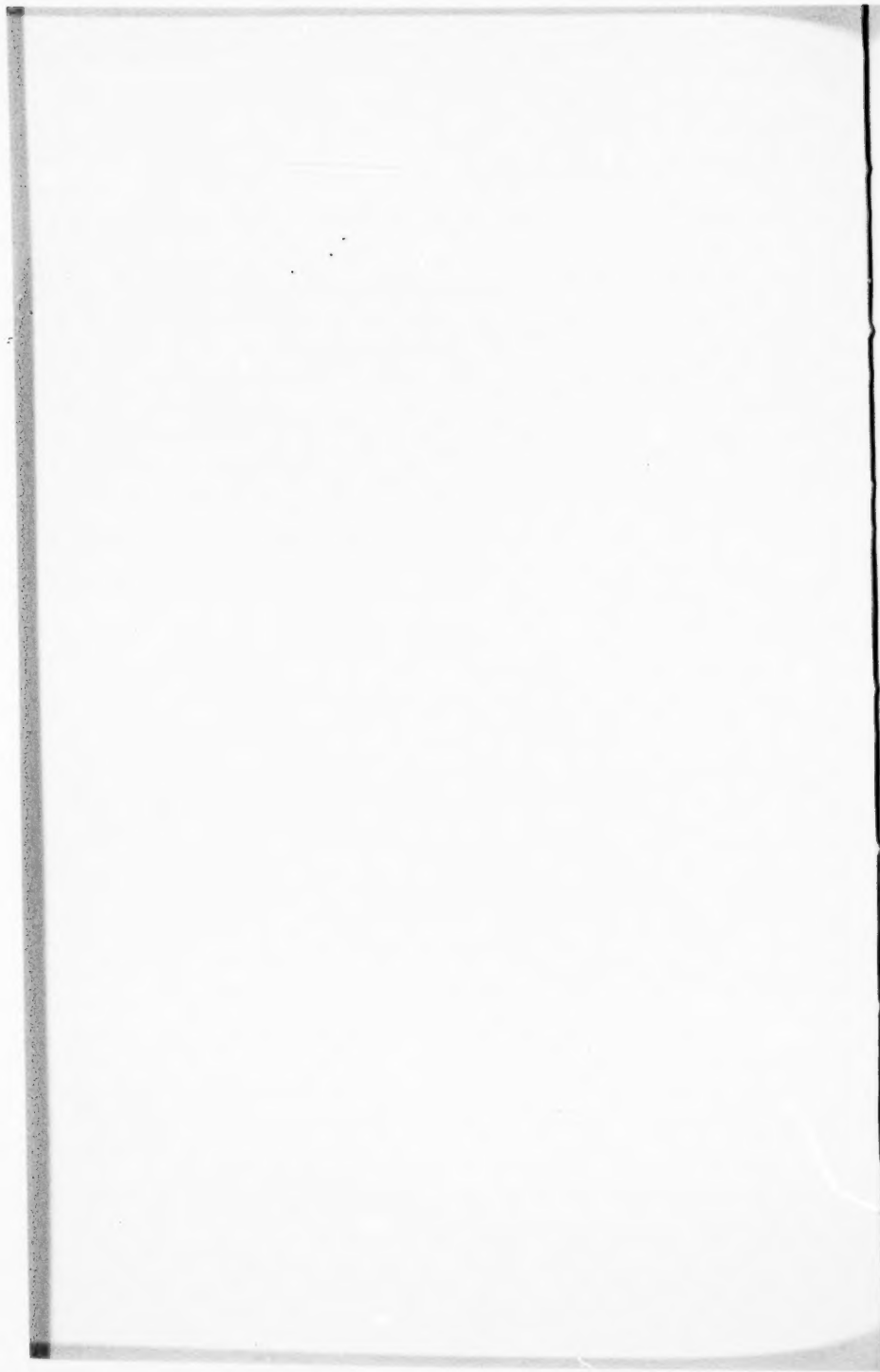
	Page
Point IV. The ruling that other employment of permanent character immediately obtained by an employee laid off was not substantially equivalent, was erroneous, because of the absence of evidence upon which to base a comparison	32
Point V. The Court below erred in basing a conclusion of discrimination upon alleged seniority of employees involved when no rights of seniority existed in the contract of employment	34
Point VI. The Court below erred in decreeing enforcement of provision in Board's order requiring petitioners to make payment to Federal agencies of the Government in reimbursement for monies paid on Federal relief projects to employees ordered reinstated	35
Conclusion	37
Appendix	39

TABLE OF CASES CITED.

	Page
Abell Co. v. N. L. R. B., 97 Fed. (2d) p. 951	21
Ballston Stillwater Knitting Co. v. N. L. R. B., 98 Fed. (2d) p. 758	24
Conn, Ltd. v. N. L. R. B., 108 Fed. (2d) p. 390	28
Cupples Company v. N. L. R. B., 106 Fed. (2d) p. 100.	23, 31
Greif & Bro., Inc. v. N. L. R. B., 108 Fed. (2d) p. 551.	23
N. L. R. B. v. Bell Oil & Gas Co., 98 Fed. (2d) p. 406..	31
N. L. R. B. v. Empire Furniture Corporation, 107 Fed. (2d) p. 92	28
N. L. R. B. v. Leviton Manufacturing Co., Inc., 111 Fed. (2d) p. 619	35
N. L. R. B. v. Lion Shoe Co., 97 Fed. (2d) p. 448	25
N. L. R. B. v. Sands Manufacturing Co., 306 U. S., p. 332	28
N. L. R. B. v. Thompson Products, Inc., 97 Fed. (2d) p. 13	30
N. L. R. B. v. Tovrea Packing Co., 111 Fed. (2d) p. 626	36
Republic Steel Corp. v. N. L. R. B. (now pending) (October Term, 1939, No. 707)	36
Union Pacific Storage Co. v. N. L. R. B., 99 Fed. (2d) p. 153	31

STATUTES CITED.

Sec. 240 (a) Judicial Code, Amended by Act of Feb- ruary 13, 1925, Title 28 U. S. C. A., Section 347..	8
Sec. 10 (e) N. L. R. Act, Title 29 U. S. C. A., Sec. 160..	8
N. L. R. Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. III, Title 29, Sec. 151 et seq.)	39
U. S. Code Annotated, Title 28, Sec. 247 (a)	41



IN THE
Supreme Court of the United States.

No. . October Term, 1940.

DAVID SUBIN AND BENJAMIN SUBIN, TRADING AS
ARCADIA HOSIERY COMPANY, ~~AND LEO MIN-
NUCCI, ET AL., CONSTITUTING THE SHOP COMMITTEE
OF THE ARCADIA HOSIERY COMPANY, Intervenor,~~
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

*To the Honorable Charles Evans Hughes, Chief Justice of
the United States, and the Associate Justices of the
Supreme Court of the United States:*

Your petitioners, David Subin and Benjamin Subin,
trading as Arcadia Hosiery Company, respectfully show:

I.

**SUMMARY STATEMENT OF THE MATTER
INVOLVED.**

1. This was a proceeding commenced by the American
Federation of Hosiery Workers, Branch No. 67 (CIO)
(hereinafter referred to as the Union) by filing a charge on

January 27, 1938, with the National Labor Relations Board (hereinafter referred to as the Board) Fourth Region.

2. Said charge alleged that David L. Subin and Benjamin Subin, trading as Arcadia Hosiery Company (petitioners herein) had discharged five employees because of their affiliation with the Union and their Union activities and had refused to reemploy them. It further charged that petitioners had caused the formation of a Shop Committee and dominated and controlled the same, contrary to the provisions of the Labor Act.

3. Two months later, to wit: on March 28, 1938, the Union filed an Amended Charge with the Board, adding thereby the names of seven more employees who, it was alleged, were likewise discharged for their affiliation with the Union and their Union activities.

4. On April 1, 1938, a Complaint was issued by the Board against the petitioners based upon the charges filed with it by the Union.

5. An Answer was filed by the petitioners on April 9, 1938, denying the allegations made in the Board's Complaint.

6. On April 11, 1938, a petition was presented by the Shop Committee for leave to intervene, which was allowed.

7. A hearing was held before an Examiner appointed by the Board, who filed his Report in which he found the charges as made were sustained, recommended the entry of a cease and desist order, and ordered the reinstatement of all employees with back pay.

8. On the appeal to the Board from the findings of the Examiner, an argument was had and, with one exception,

the Report of the Examiner was sustained and the Board made its findings and order (R. 979).

9. A petition was presented to the Circuit Court of Appeals for the Third Circuit for a review of the said findings and order and praying for a reversal thereof.

10. The Board filed its answer to the petition and therein prayed for the enforcement of its order.

11. An oral argument was had before the Circuit Court of Appeals which subsequently filed its Opinion, which, with two modifications, sustained the findings and order of the Board.

12. On March 30, 1940, a Decree was entered by the Court below enforcing the findings and order of the Board as modified.

13. A petition for rehearing was presented to the Circuit Court of Appeals, which rehearing was denied on May 7, 1940.

II.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Court below decided an important question of law contrary to the provisions of the National Labor Relations Act.

2. The decision of the Court below is in conflict with decisions of the Circuit Court of Appeals in the First, Second, Fourth, Sixth, Seventh and Eighth Circuits.

3. The primary questions presented are of great public importance:

(a) The question of how far a Circuit Court of Appeals may go in enforcing the findings and orders of the Labor Board, when the same are based upon no relevant evidence, is of vital public importance.

(b) The question whether an alleged discriminatory discharge may be inferred from a finding of seniority when the contract of employment has no such provision is of vital importance to the public. The ruling of the Court below predicated upon such an alleged right is without authority in law.

(c) The ruling of the Court below on the question of "substantially equivalent" employment involves an interpretation of Sections 2 (3) and 10 (c) of the National Labor Relations Act, and is erroneous. It presents a question of General importance in labor cases, which appears not to have been ruled upon by this Court.

(d) Whether the Court below had the right to order the deduction from back pay of amounts paid by Governmental Work Relief Projects to employees discharged by the petitioners, for services actually performed by them on such projects, and to reimburse such Governmental Work Relief Projects for the monies so paid to the discharged employees, is a question of vital public importance.

WHEREFORE, your petitioners pray that writ of certiorari issue under the seal of the Court directed to the Circuit Court of Appeals for the Third Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in the case, numbered and entitled on its docket 7092, October Term, 1939, to the end that this cause may be reviewed and determined

by the Court as provided by the Statutes of the United States; and that the judgment herein of said Circuit Court of Appeals for the Third Circuit be reversed by the Court; and for such further and other relief as to this Court may seem proper.

AND your petitioners will ever pray.

DAVID L. SUBIN and BENJAMIN SUBIN,
Trading as ARCADIA HOSIERY COM-
PANY,

By CHARLES L. GUERIN,
Counsel.

1421 Chestnut Street,
Philadelphia, Pa.

CHARLES J. WEISS, Esq.,
S. W. Cor. 15th & Chestnut Sts.,
Philadelphia, Pa.

THOMAS F. GAIN, Esq.,
1421 Chestnut Street,
Philadelphia, Pa.
Of Counsel.

July , 1940.